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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

FELIPE ROCHA,

Petitioner,

V.

**ROBERT A. HOREL, Warden,**

### Respondent.

C 07-3295 CRB (PR)

## **ANSWER TO ORDER TO SHOW CAUSE**

Respondent provides this answer to the Order to Show Cause why the petition for writ of habeas corpus should not be granted.

J.

## CUSTODY

Petitioner is lawfully in the custody of the California Department of Corrections and Rehabilitation as the result of a judgment of conviction in Del Norte County in Case No. CRPB 03-5207.

28 On December 3, 2003, the District Attorney filed an information in Del Norte County

1 Superior Court accusing petitioner, Felipe Rocha, as follows: count one, assault by a non-life inmate  
 2 with a deadly weapon or by means likely to cause great bodily injury in violation of California Penal  
 3 Code § 4501<sup>1/</sup> with a special allegation of great bodily injury in violation of § 12022.7; count two,  
 4 battery with serious bodily injury in violation of § 243(d), with a special allegation of personal use  
 5 of a deadly weapon within the meaning of § 12022(b), causing the offense to be a serious felony  
 6 within the meaning of § 1192.7(c)(23); count three, participating in a riot in violation of § 405 with  
 7 a special allegation of personal use of a deadly weapon within the meaning of § 12022(b), causing  
 8 the offense to be a serious felony within the meaning of § 1192.7(c)(23); count four, possession of  
 9 a weapon while confined in state prison in violation of § 4502(a). It was further alleged that  
 10 petitioner was previously convicted within the meaning of § 1170.12 and § 667(b) to (i), and that  
 11 petitioner was previously convicted and served a prison term within the meaning of § 667.5(b). 1  
 12 CT 16-18.

13 On October 4, 2004, the information was amended by dismissing counts two and three,  
 14 and by striking the enhancement allegations under § 12022.7 and § 12022(b). Count four was  
 15 renumbered as count two. 1 CT 144.

16 On October 5, 2004, the District Attorney withdrew the allegation that petitioner was  
 17 previously convicted and served a prison term within the meaning of § 667.5(b). The issue of the  
 18 remaining prior conviction allegation was submitted to the court without a jury. 1 CT 154.

19 On October 6, 2004, the jury returned guilty verdicts on counts one and two as charged,  
 20 and the court found the remaining prior conviction allegation to be true. 1 CT 199, 201-02.

21 On November 4, 2004, the court sentenced petitioner to state prison for a term of eight  
 22 years, consisting of double the midterm of four years for count one with double the midterm of six  
 23 years for count two stayed under § 654, the term of eight years to be served consecutive to the term  
 24 he was already serving. 1 CT 209-11.

25 On May 18, 2006, the California Court of Appeal, First Appellate District, affirmed the  
 26 judgment. Exh. G.

27  
 28 1. Unspecified statutory references are to the California Penal Code.

1 On August 2, 2006, the California Supreme Court denied petitioner's petition for review.

2 Exh. I.

3 On June 22, 2007, petitioner filed a petition for writ of habeas corpus in this Court.

4 On November 15, 2007, this Court issued an order to show cause.

5 **II.**

6 **VERIFICATION**

7 Petitioner signed and verified the petition.

8 **III.**

9 **GENERAL AND SPECIFIC DENIALS**

10 Respondent denies that the state court's rulings were based on unreasonable  
11 determinations of facts or were contrary to or involved an unreasonable application of clearly  
12 established United States Supreme Court law. Respondent specifically denies petitioner's claims  
13 as follows: one, ineffective assistance of counsel; and two, improper denial of motion to substitute  
14 counsel.

15 **IV.**

16 **PROCEDURAL ISSUES**

17 Petitioner exhausted state remedies for his claims that are contained in the petition.  
18 Petitioner filed his petition within the one-year statute of limitations period set by 28 U.S.C. §  
19 2244(d).

20 **V.**

21 **LODGED DOCUMENTS**

22 Respondent is lodging concurrently with this answer the following exhibits:

23 EXHIBIT A Clerk's Transcript (2 vols.), *People v. Rocha*, Del Norte County Case No.  
CRPB 03-5207.

24 EXHIBIT B Reporter's Transcript (15 vols.), *People v. Rocha*, Del Norte County Case No.  
CRPB 03-5207.

26 EXHIBIT C Exhibit No. 15, *People v. Rocha*, Del Norte County Case No. CRPB 03-5207.

27 EXHIBIT D Appellant's Opening Brief, *People v. Rocha*, California Court of Appeal Case  
No. A108363.

1 EXHIBIT E Respondent's Brief, *People v. Rocha*, California Court of Appeal Case No.  
A108363.

2 EXHIBIT F Appellant's Reply Brief, *People v. Rocha*, California Court of Appeal Case No.  
A108363.

3 EXHIBIT G Opinion, *People v. Rocha*, California Court of Appeal Case No. A108363.

4 EXHIBIT H Petition For Review, *People v. Rocha*, California Supreme Court Case No.  
S144613.

5 EXHIBIT I Denial Of Review, *People v. Rocha*, California Supreme Court Case No.  
S144613.

6

7 **VI.**

8

9 **INCORPORATION BY REFERENCE**

10 Respondent hereby incorporates by reference the accompanying memorandum of points  
11 and authorities in support of this answer.

12

13 **VII.**

14

15 **CONCLUSION**

16 Respondent respectfully requests that the petition for writ of habeas corpus be denied with  
17 prejudice.

18 Dated: December 10, 2007

19 Respectfully submitted,

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24 /s/ Allen R. Crown  
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